

108 CMR 6.00: ALTERNATIVE SOURCES OF INCOME

Section

6.01: Deduction of Alternative Sources of Income

6.02: Assets

6.03: Liens

6.04: Assignments

6.01: Deduction of Alternative Sources of Income

(1) General Rule. Except as provided otherwise by statute or regulation, the veterans' agent shall offset the applicant's needs budget with alternative sources of income.

(2) Applicant's Obligation to Report Income. The veterans' agent shall inform the applicant of his or her obligation to report to the veterans' agent all income received from all other sources, including but not limited to merchandise or services received in lieu of money, and credit card advances while receiving veterans' benefits.

(3) Applicant's Obligation to Utilize Alternative Sources of Income. As a prerequisite of eligibility to receive benefits, the veterans' agent shall require that the applicant file applications and submit documentation thereof to receive any and all alternative types of benefits available to him or her. Alternative sources include but not limited to: VA compensation, VA non-service pension, Social Security, railroad retirement, Supplemental Security Income, workmen's compensation or private pension plans. Proof of application for those alternative benefits must be submitted to DVS. If the availability of such other benefits arises after the applicant has begun receiving veterans' benefits, the veterans' agent shall require the applicant to immediately file appropriate applications. The veterans' agent shall require the applicant to execute an assignment or agreement to reimburse as the circumstances may require under 108 CMR 6.04. The veterans' agent shall explain the meaning of these documents to the applicant. Copies of these must be submitted to DVS with the Form VS-21A.

(4) Types of Exempt Income.

(a) A veteran's income from annuities received under the provisions of M.G.L. c. 115, § 6B, shall not be counted as income to be deducted in determining veterans' benefits.

(b) Money which an applicant has received from the United States or the Commonwealth as a "bonus" for military service or enrollment shall not be considered as income to be deducted in determining benefits.

(c) Earned income of children attending high school shall not be counted.

(d) Earned income for children attending college shall not be counted.

(e) Payments made to an applicant from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange Product Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.) and the Radiation Exposure Compensation Program shall not be considered income in determining veterans' payments.

(5) Calculation of Employment Income. An applicant's monthly wages shall be calculated by subtracting from the weekly gross income federal and state taxes withheld and mandatory retirement, health and hospital insurance payments. From the resulting net weekly income, the following steps shall be applied.

(a) Add four consecutive weekly net paychecks.

(b) Divide by four.

(c) Multiply by 4.33

(d) Deduct \$200 as a work incentive.

(6) Income from Rental Property. Rental income earned by an applicant on property in which he or she resides which produces income shall be considered as income. Profits are calculated by deducting from rental income principal and interest on the mortgage, property taxes (current or betterment), fire insurance premiums, water and sewer, and reasonable maintenance costs. An applicant shall not receive benefits to compensate for property losses.

6.01: continued

(7) Single Home or Multiple Dwelling (Not Occupied by Applicant). If the property produces income it is considered business property, and the income produced shall be counted. The veterans' agent shall not, under any circumstances, compel the applicant to make a disadvantageous sale of property.

6.02: Assets

For the purpose of 108 CMR 6.02, the term "assets" shall include, but not be limited to, bank deposits and accounts, corporate stocks, bonds, and other negotiable instruments. Assets shall not include life insurance policies in amounts which are not excessive for the applicant's needs. The proceeds from the sale of the home in which the applicant resides shall not be considered assets if they are used, within six months of the sale date, to purchase another home in which the applicant will reside.

The value of bank accounts held in more than one name, one of which is the applicant's name, shall be apportioned equally among the co-holders of the accounts. Assets, upon application, are permissible up to the limits pursuant to the Secretary's Budget Amounts directive.

(1) Divestiture of Income or Assets. If an applicant transfers or assigns income or assets for less than fair market value three years prior to coming on veteran's benefits, the presumption is that the transfer or assignment was made for the purpose of obtaining benefits. The presumption can be rebutted by evidence establishing that the transfer or assignment was made for other reasons.

(2) Irrevocable Trust and Life Estate. An exception will be made when the applicant transfers his or her home into an irrevocable trust and retains a life estate. In that case, the presumption is that the applicant has no shelter expenses, and, therefore, a shelter allowance will not be allowed. This presumption may be rebutted by documentary evidence to the contrary.

(3) Education Trust Funds. In all cases, the veterans' agent shall conduct an investigation to determine whether an educational trust fund is being used exclusively for that purpose. Among the factors which the veterans' agent shall consider are the original creator of the fund, the date the trust was created, whether the fund has been used for other than the stated purpose, whether the trust is an irrevocable trust, and whether the beneficiary is aware of the trust fund in his or her name. If the veterans' agent determines that the fund is a valid educational trust fund, it shall not be considered an asset.

(4) Asset Liquidity. In determining whether an applicant possesses sufficient assets to disqualify him or her from receiving veterans' benefits, the veterans' agent shall take into account the liquidity of the assets, that is, the ease with which they may be converted to cash. Generally, the less liquid the asset, the less it shall be considered as available to meet the applicant's immediate financial needs and, therefore, the less it shall be considered as a disqualifying factor. As soon as an asset has been converted to cash, it shall immediately be offset against the applicant's financial needs. The applicant shall be expected to take available steps to convert all assets which exceed the prescribed limits to cash in the most prompt and advantageous manner.

(5) Maximum Asset Allowances. The veterans' agent shall not grant benefits to an applicant who possesses assets that exceed the limits for various categories of applicants set forth in the Secretary's Budget Amounts directive of maximum asset allowances. If an applicant's assets exceed his or her allowance, the veterans' agent shall disqualify the applicant from receiving any benefits payments until the assets are spent down below the allowance limit, at which time the applicant may reapply for benefits. Verification of the spend-down is required by the veterans' agent.

6.03: Liens

(1) General Authority. Pursuant to M.G.L. c. 115, § 5A, the veterans' agent shall execute an instrument giving notice of a lien on any parcel of real estate in which a dependent mother or father receiving veterans' benefits has an interest in excess of \$1,500.00. The veterans' agent shall send the notice of lien by certified mail to the dependent mother or father and, at least three business days later, shall record a notice of lien in the Registry of Deeds of the county, or the district if the county is divided into districts, in the district in which the real estate is located. If the real estate is registered, the veterans' agent shall file the lien in the Registry District of the Land Court. Upon filing of the notice, this instrument creates a lien on behalf of the Commonwealth on only that part of the dependent mother or father's interest in excess of \$1,500.00 of the fair market value of the real estate.

(2) Enforcement of the Lien. The veterans' agent may enforce a real estate lien by filing a Petition in Equity in the Superior Court for the county where the real estate is located. In filing such a petition, the veterans' agent shall seek the legal advice of the corporation counsel, city solicitor, or town counsel, as the case may be. The veterans' agent shall not take steps to enforce a lien until both the dependent mother or father has died, and he or she has obtained the written permission of the Secretary. In his or her discretion, the Secretary may waive enforcement, in whole or in part, in order to avoid the undue hardship which the enforcement might cause.

(3) Prior Conveyance. If the dependent mother or father conveys her or his interest in real estate no more than two years prior to an application for veterans' benefits, she or he shall be deemed to have tried to avoid the provisions of 108 CMR 6.03 and shall be considered ineligible for such benefits. The provisions shall not apply if the conveyance was for an amount equal to or exceeding the fair market value of the real estate.

(4) Subordination. Upon prior approval of the Secretary, the veterans' agent may enter into a written agreement with the dependent mother and father by which he or she consents to subordinate a lien obtained pursuant to 108 CMR 6.03. The Secretary shall grant his or her permission for such a subordination only if the mortgagee is required to pay for necessary repairs to the real estate.

(5) Gold Star Exemption. The provisions of 108 CMR 6.03 shall not be applied to real estate owned by the mother or father of a person who was killed in action or died from service-connected disability incurred while he or she was in wartime military service with the Armed Forces of the United States.

(6) Dissolution of Lien. Upon the expiration of 20 years from the date of the recording of a real estate lien in the office of the Register of Deeds, wherein the real estate lies, such lien shall be dissolved and unenforceable. When a real estate lien becomes dissolved and unenforceable, the veterans' agent shall submit a Discharge of Real Estate Lien (Form VS-26) to the Secretary and a copy to the Register of Deeds of the county, or district, if the county is divided into districts, in which the real estate is located.

(7) Failure to Discharge Lien. If a veterans' agent neglects or refuses promptly to refer the enforcement of a lien under 108 CMR 6.03 to the Secretary, for his or her approval, or to bring a petition within the period specified by the Secretary, the Secretary shall thereupon bring the petition in his or her own name; and in such event, all proceeds shall be retained by the Commonwealth.

6.04: Assignments

(1) General Authority for Mandatory Assignment. Where the applicant's need for veterans' benefits is a result of the unemployment, accidental disability or illness of the applicant, and monetary remuneration is available to the applicant in the form of workmen's compensation, accident or health insurance, or damages resulting from legal action in tort, the veterans' agent shall take an assignment of that remuneration. The assignment operates as a lien on the monetary remuneration up to the total amount of veterans' benefits paid to, or on behalf of, the applicant. The veterans' agent may enforce the lien or assignment by filing a petition in the district court for the city or town through which the benefits payments are made.

6.04: continued

(2) General Notification of Assignment. The veterans' agent shall send a copy of the assignment to the applicant's attorney, to the prospective defendant's insurance company, and, if pertinent, to the Industrial Accident Board. The copy sent to the insurance company and lawyer shall be by certified or registered mail, return receipt requested.

(3) Settlement of the Assignment.

(a) In assignment cases where an offer is made to settle the applicant's claim, the veterans' agent shall consider all relevant facts and circumstances in deciding whether the offer is acceptable and shall make an appropriate written recommendation to DVS.

(b) The recommendation shall be accompanied by a report which states the reasons for the veterans' agent's recommendation, as well as the type of claim assigned and the amount of the proposed settlement, including all authorized deductions. The authorized deductions are those bills directly related to the assigned claim, such as physician and hospital charges, and attorneys' fees. Such deductions shall not include charges incurred before the date of the claim. The report shall indicate whether there has been any voluntary reduction of these charges by the parties involved. The report also shall mention any hardship factors present in the case.

(c) It is the general rule that full reimbursement shall be obtained in the settlement of assignment cases. However, in cases where full reimbursement is likely to create hardship, the veterans' agent may recommend, with the supporting evidence, that less than full reimbursement be accepted in settlement of the assigned claims. The recommendation of the veterans' agent shall not be implemented without the prior approval of DVS.

(4) Partial Discharge of the Assignment.

(a) DVS encourages the veterans' agent to negotiate the partial discharge of the assignment of an uncontested claim, in order that the applicant may promptly begin receiving benefits.

(b) The veterans' agent shall not negotiate the partial discharge of the assignment of a contested claim for workmen's compensation without the prior approval of DVS. The purpose of this requirement is to protect, on the Commonwealth's behalf, the significant sums of earned damages which frequently accumulate during the period of contest.

(c) In any cases where the fullest possible recovery of an assigned claim is not realized because of the failure or neglect of the veterans' agent to comply with the provisions of 108 CMR 6.00, DVS shall not provide reimbursement for benefits paid.

(5) Agreement to Reimburse. In cases where the applicant's need for veterans' benefits is a result of delay in the applicant's receiving payments from any source, the veterans' agent shall obtain from the applicant an Agreement to Reimburse (Form VS-20A,) to the city or town for veterans' benefits received while waiting for said payments. This agreement must be properly dated and signed by both the applicant and the veterans' agent, and submitted by the veterans' agent when requesting authorization for the payment of benefits. An Agreement to Reimburse shall not apply in cases involving unemployment benefits that may be due to an applicant under M.G.L. c. 151A.

(6) Procedure. In all such cases, a Form VS-20A shall be executed and a copy of same forwarded to DVS when submitting a new application or a reapplication. If the possibility of benefits other than those received under M.G.L. c. 115, becomes available to applicants, after they have started to receive assistance, the veterans' agent must require the applicant to sign an agreement to reimburse. The DVS Authorizer responsible for reviewing an agent's cases will not approve requests for reimbursement unless he or she receives a proper Form VS-20A on all such cases. Failure to execute a Form VS-20A shall result in loss of reimbursement.

(7) Reimbursement of Benefits Received Under an Agreement to Reimburse.

(a) In cases where the applicant has received payment from any source, for which he or she has signed an Agreement to Reimburse, the veterans' agent shall seek reimbursement from the applicant in an amount not to exceed the amount of aid granted.

6.04: continued

(b) If the applicant in such cases fails or is unwilling to make such reimbursement, the veterans' agent shall give the applicant a Notice of Action in accordance with 108 CMR 8.03. The veterans' agent shall send a copy of the notification, Notice of Reimbursed Funds (Form VS-20B)(Green Sheet), to DVS. The veterans' agent shall notify the Secretary whenever the agent receives reimbursed funds from any source. One form shall be completed for each case and no more than one name shall appear on each form.

REGULATORY AUTHORITY

108 CMR 6.00: M.G.L. c. 115.

NON-TEXT PAGE